



Public Notice

U.S. Army Corps Of Engineers Galveston District	Permit Application No: _____	23339
	Date Issued: _____	11 March 2004
	Comments Due: _____	12 April 2004

**U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
AND
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

PURPOSE OF PUBLIC NOTICE: To inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

AUTHORITY: This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

APPLICANT: Orange County Drainage District
8081 Old Highway 90
Orange, Texas 77630-1036

AGENT: Horizon Environmental Services, Inc.
2600 Dellana Lane, Suite 200
Austin, Texas 78746-5784
Telephone: 512-328-2430
POC: Valerie Learman

LOCATION: The project site is located in Vidor Marsh near the South Tiger Creek outfall, approximately 300 feet south of the Union Pacific Railroad trestle, southeast of Rose City, in Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Beaumont East, Texas. Approximate UTM Coordinates: Zone 15; Easting: 400455; Northing: 3330165.

PROJECT DESCRIPTION: The applicant is requesting after-the-fact authorization to retain approximately 6,482 cubic yards of fill material discharged into waters of the United States as a result of dredging activities performed in advance of obtaining a Department of the Army permit.

The applicant now wishes to properly permit the excavation of a 500-foot-long by 40-foot-wide drainage ditch that connects South Tiger Creek to the Vidor Marsh and five 1000-foot-long by 10-foot-wide by 3.5-foot-deep discharge “finger” channels that were dredged out of Vidor Marsh near its confluence with the newly constructed channel. The material generated from the excavation of the “five fingers” was distributed along the length of each channel, immediately adjacent to the excavated area. Material removed from the drainage ditch was placed on uplands along the reach of the newly excavated channel. The work was intended to introduce fresh water into the marsh by way of the creek and to increase the flood capacity of South Tiger Creek. The majority of the work has been completed; however the applicant now wishes to remove a small upland peninsula that remains at the confluence of the constructed channel and South Tiger Creek and an earthen plug at the southern end of the channel near its confluence with the five fingers.

A total of 2.30 acres of wetland habitat was impacted as a result of the unpermitted activity. An additional 0.23 acre of wetlands, 0.11 acres of which are forested, will be impacted as a result of the additional dredging to connect the drainage ditch to the marsh. The construction of the “five fingers” will benefit the marsh, and, as such, mitigation for impacts to Vidor Marsh is not being offered. The applicant will, however, initiate a nuisance species control plan to ensure that the mounds do not provide an additional vector for the infiltration of undesirable species into the marsh. Mitigation for impacts to the wooded wetland at the perimeter of South Tiger Creek will include regrading the slopes of the constructed channel to 3:1 and planting 200 five-gallon trees along the banks of the constructed channel on 20-foot-wide terraces. The types of trees to be planted along the channel slopes include bald cypress, and swamp tupelo. To encourage diversity along the channel, the applicant will plant 65 additional trees from five additional tree species. Standard success and monitoring criteria would be incorporated into the permit authorization.

The applicant’s plans are enclosed in 6 sheets.

NOTES: This public notice is being issued based on information furnished by the applicant. This information has not been verified.

A preliminary review of this application indicates that an Environmental Impact Statement (EIS) is not required. Since permit assessment is a continuing process, this preliminary determination of EIS requirement will be changed if data or information brought forth in the coordination process is of a significant nature.

Our evaluation will also follow the guidelines published by the U.S. Environmental Protection Agency pursuant to Section 404 (b)(1) of the Clean Water Act (CWA).

OTHER AGENCY AUTHORIZATIONS: Texas Coastal Zone consistency certification is required. The applicant has stated that the project is consistent with the Texas Coastal Management Program goals and policies and will be conducted in a manner consistent with said Program.

STATE WATER QUALITY CERTIFICATION: Although this project would result in a direct impact of three acres or less of waters of the state or 1500 linear feet of streams (or a combination of the two is below the threshold), the best management practices (BMP's) available on the BMP checklist form are not applicable to this project, as this action is being processed as an After-the-Fact permit. Therefore, Texas Commission on Environmental Quality (TCEQ) certification is required. Concurrent with processing of this application, the TCEQ is reviewing this application under Section 401 of the CWA and in accordance with Title 30, Texas Administrative Code Section 279.1-13 to determine if the work would comply with State water quality standards. By virtue of an agreement between the U.S. Army Corps of Engineers (Corps) and the TCEQ, this public notice is also issued for the purpose of advising all known interested persons that there is pending before the TCEQ a decision on water quality certification under such act. Any comments concerning this application may be submitted to the Texas Commission on Environmental Quality, 401 Coordinator, MSC-150, P.O. Box 13087, Austin, Texas 78711-3087. The public comment period extends 30 days from the date of publication of this notice. A copy of the public notice with a description of work is made available for review in the TCEQ's Austin office. The complete application may be reviewed in the Corps office. The TCEQ may conduct a public hearing to consider all comments concerning water quality if requested in writing. A request for a public hearing must contain the following information: the name, mailing address, application number, or other recognizable reference to the application, a brief description of the interest of the requester, or of persons represented by the requester; and a brief description of how the application, if granted would adversely affect such interest.

NATIONAL REGISTER OF HISTORIC PLACES: The staff archaeologist has reviewed the latest published version of the National Register of Historic Places, lists of properties determined eligible, and other sources of information. The following is current knowledge of the presence or absence of historic properties and the effects of the undertaking upon these properties:

Cultural resources may have been impacted by the project. The construction of the "five fingers" is not as much of a concern because it lies in marsh, as is the northern excavated portion consisting of a 500-foot-long by 40-foot-wide drainage ditch that connects South Tiger Creek to the Vidor Marsh. Available data suggests the permit area is likely to yield resources eligible for inclusion in the National Register of Historic Places. Therefore, a cultural resources investigation is required to determine if potentially eligible historic properties were impacted by the drainage ditch portion of the project.

THREATENED AND ENDANGERED SPECIES: Preliminary indications are that no known threatened and/or endangered species or their critical habitat will be affected by the proposed work.

ESSENTIAL FISH HABITAT: This notice initiates the Essential Fish Habitat consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Our initial determination is that the proposed action would not have a substantial adverse impact on Essential Fish Habitat or federally managed fisheries in the Gulf of Mexico. Our final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with the National Marine Fisheries Service.

PUBLIC INTEREST REVIEW FACTORS: This application will be reviewed in accordance with 33 CFR 320-330, the Regulatory Programs of the Corps of Engineers, and other pertinent laws, regulations and executive orders. The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors, which may be relevant to the proposal, will be considered: among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs and, in general, the needs and welfare of the people.

SOLICITATION OF COMMENTS: The Corps of Engineers is soliciting comments from the public, Federal, State, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Impact Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

This public notice is being distributed to all known interested persons in order to assist in developing facts upon which a decision by the Corps of Engineers may be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

PUBLIC HEARING: Prior to the close of the comment period any person may make a written request for a public hearing setting forth the particular reasons for the request. The District Engineer will determine whether the issues are substantial and should be considered in the permit decision. If a public hearing is warranted, all known interested persons will be notified of the time, date, and location.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before **12 April 2004**. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. **If no comments are received by that date, it will be considered that there are no objections**. Comments and requests for additional information should be submitted to:

Kimberly McLaughlin
Regulatory Branch, CESWG-PE-RE
U.S. Army Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553-1229
409-766-3936 Phone
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